

### REMARKS

Applicant has amended claims 1, 4, 5, 6, 15, 21, and 23-26. Claims 8-10 have been cancelled. These amendments have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §§102(b), 103(a), and 112 rejections as set forth in the Office Action dated March 4, 2005. It is believed that none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has objected to claims 1, 6, 23, and 24 for their inclusion of blank lines. Applicant has amended claims 1, 6, 23 and 24 to state the ATCC Accession number for the claimed cultivar. Withdrawal of this objection is requested.

The Examiner has objected to claim 1. Applicant has amended claim 1 as suggested by the Examiner. Withdrawal of this objection is requested.

The Examiner has objected to claim 4. Applicant has amended claim 4 as suggested by the Examiner. Withdrawal of this objection is requested.

The Examiner has objected to claim 5. Applicant has amended the claim 5 as suggested by the Examiner. Withdrawal of this objection is requested.

The Examiner has objected to claim 21. Applicant has amended claim 21 as suggested by the Examiner. Withdrawal of this objection is requested.

The Examiner has rejected claims 1-28 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicant has deposited 2500 seeds with American Type Culture Collection. The date of deposit was February 18, 2005 and the ATCC Accession Number for the deposit is PTA-6596. Additionally, the undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;

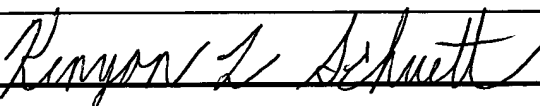
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) the viability of the biological material at the time of deposit was tested; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 8-10 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has canceled claims 8-10. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 8-10 and 21-22 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has canceled claims 8-10 and amended claim 21. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 8-10 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Wallace et. al. (Crop. Sci. 42: 2216-2217, 2002). Applicant has cancelled claims 8-10. Withdrawal of this rejection is respectfully requested.

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| SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED |   |           |              |          |              |
| NAME AND REG. NUMBER                               | KENYON L. SCHUETT, Reg. No. 44,324  |           |              |          |              |
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